Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers	)	RM-10822
	)	

T-MOBILE USA COMMENTS

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Summary of Comments

T-Mobile makes three main points in its comments.

1. Adoption for rural carriers of a forward-looking cost methodology for USF support is long overdue. Nearly eight years after the 1996 Act, rural carriers continue to receive USF support based on their embedded costs, even though the Commission has recognized that such an approach leads to "subsidization of inefficient carriers at the expense of efficient carriers" and creates "disincentives for carriers to operate efficiently." The Commission has repeatedly held that rural carrier USF support should instead be based on forward-looking economic costs. Because the current embedded cost plan is scheduled to expire in three years, the Commission should give priority to the development of a replacement plan based on forward-looking economic costs.

2. The Commission should take two steps in response to Western Wireless' petition:

   (a) It should immediately refer to the Joint Board the task of developing a long-term plan for rural carrier USF support. T-Mobile recommends certain instructions for the Joint Board so as to minimize controversy and enable the Joint Board to discharge its duties more expeditiously; and

   (b) It should immediately cap total disbursements for the high-cost USF so the goals of universal service in non-rural areas are not jeopardized. The high-cost USF program has grown dramatically in recent years, at a rate faster than the growth of the contribution base. The USF contribution rate paid by American consumers has increased significantly as a result. USF contributions are becoming so sizable that the program is becoming counterproductive by making telecommunications services less affordable, especially for price-sensitive consumers in non-rural areas. To preserve universal service throughout the country, T-Mobile urges the Commission to impose caps on the high-cost USF program similar to the caps it has adopted for the school/libraries and health care programs.

3. The Commission should also charge the Joint Board with considering more substantial reform proposals. The development of a forward-looking economic cost model for rural carrier USF support will be both complex and controversial, and it is unlikely that consensus can be achieved. Accordingly, T-Mobile encourages the Commission to use this opportunity to charge the Joint Board with considering more substantial reform, including (a) an auction-based USF plan, where USF support could be given to the carrier submitting the lowest bid in an area, and (b) a voucher system, whereby available USF subsidies would be given directly to consumers rather than carriers. These reforms, however, do not obviate the need to develop a forward looking cost methodology for rural USF support.

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T-MOBILE USA COMMENTS

T-Mobile USA, Inc. ("T-Mobile") submits these comments in support of the Petition for Rulemaking filed by Western Wireless Corporation ("Western Petition").[1] In its petition, Western asks the Commission to commence the same rural carrier universal service fund ("USF") reform proceeding that the Commission stated it would commence before January 1, 2002.[2] The current interim USF plan for rural carriers is scheduled to expire in less than three years. Because additional delay in commencing the requested proceeding would mean that the Joint Board and the Commission would have even less time to consider a long term USF plan for carriers serving rural areas, T-Mobile urges the Commission to commence expeditiously this reform proceeding.

In addition, there is a general recognition that growth in the USF contribution factor over the past several years has been so rapid and dramatic that the rural USF program is beginning to affect the affordability of telecommunications services in non-rural areas. To the extent that the growth in disbursements in the rural USF program is due to increased activity by competitors in rural areas, that growth should be viewed as a victory by the Commission, since it indicates that

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[1] *See Public Notice,* Report No. 2638 (Nov. 19, 2003).

[2] *See* note 24, *infra*.

competition is possible in rural areas when competitors are placed on an equal footing in terms of USF support. Although the purpose of the USF support system may not be to "promote" competition in rural areas, that system should also not be designed in such a way that it prevents competition from developing, regardless of the relative costs and efficiencies of new entrants and incumbents. As a result, the challenge for the Commission is to design a support system that is consistent with the principles of Section 254(b), does not prevent competition in rural areas, and at the same time is limited to a level that does not endanger the goals of universal service in non-rural areas. While the Commission puts such a system in place, T-Mobile urges the Commission to impose a cap on total USF high cost fund disbursements, in order to limit the expanding impact of the rural USF program on all customers.

I. ADOPTION FOR RURAL CARRIERS OF A FORWARD-LOOKING COST METHODOLOGY FOR USF SUPPORT IS LONG OVERDUE

The Commission determined in 1997 that USF support for all carriers should be based on forward-looking economic cost methodologies but that rural carriers should have some time to adjust moving to such a plan. Six years have elapsed, yet no work has been undertaken to develop a long-term USF support plan for carriers serving rural areas. T-Mobile urges the Commission to refer immediately to the Joint Board the task of developing a forward-looking economic cost methodology for rural carriers.

A. THE COMMISSION HAS REPEATEDLY RECOGNIZED THAT RURAL CARRIERS SHOULD RECEIVE USF SUPPORT BASED ON THEIR FORWARD-LOOKING COSTS

The Commission has held repeatedly that basing USF support on forward-looking costs, including for rural carriers, is "the best means for determining the level of universal service support" in a competitive environment.[3] Seven years have passed since the 1996 Act was enacted, yet rural carriers continue to receive USF support based on their embedded costs, an approach the Commission has held is antithetical to competition and economic efficiency. It is time that a forward-looking economic cost model for USF support be developed – and implemented – for carriers serving rural areas.

Congress in the 1996 Telecommunications Act "directed the Commission and the states to take the necessary steps to create universal service mechanisms that would be sustained in a competitive environment."[4] The Joint Board was the first to consider changes to the USF programs developed prior the 1996 Act. The Joint Board determined that it is "vital" that the

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[3] *See First Universal Service Order,* 12 FCC Rcd 8776, 8900 ¶ 226 (1997).

[4] *MAG Order,* 16 FCC Rcd 19613, 19665 ¶ 123 (2001). *See also* 47 U.S.C. § 254; H. REP. NO. 204, 104th Cong., 1st Sess. 80 (1995); *First Universal Service Order,* 12 FCC Rcd 8776, 8780-81 ¶¶ 1-2 (1997).

Commission replace use of embedded cost mechanisms with use of forward-looking economic costs as the basis for determining support levels:

> We find that forward-looking economic costs should be used to determine the cost of providing universal service. Those costs best approximate the costs that would be incurred by an efficient competitor entering that market. * * * If support is based on embedded costs for the long-run, then incumbents and new entrants alike will receive incorrect signals about where they should invest.[5]

The Commission, after receiving an additional round of comments, agreed with the Joint Board's recommendation. Specifically, the Commission found a forward-looking economic cost methodology, including for rural carriers, is "the best means for determining the level of universal service support":

> [T]he use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation. * * * [A] forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting. Moreover, a forward-looking economic cost methodology could be designed to target support more accurately by calculating costs over a smaller geographical area than the cost accounting systems that the LECs currently use.[6]

In contrast, the Commission observed that continued use of an embedded cost approach would send "the wrong signals to potential entrants and existing carriers":

> The use of embedded cost would discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments. . . . [S]upport based on embedded cost could jeopardize the provision of universal service . . . would lead to subsidization of inefficient carriers at the expense of efficient carriers and could create disincentives for carriers to operate efficiently.[7]

The Commission in its 2001 *Rural Task Force Order* reaffirmed that USF support based on forward-looking cost "sends the correct signals for entry, investment, and innovation," and the Commission rejected arguments that it should abandon a forward-looking cost methodology

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5 *Universal Service Recommended Decision,* 12 FCC Rcd 87, 230 ¶ 270, 242 ¶ 275 (1996).

6 *First Universal Service Order,* 12 FCC Rcd at 8899 ¶ 224, 8900 ¶ 226.

7 *Id.* at 8901 ¶ 228.

for rural carriers.[8] And in its 2001 *MAG Order,* the Commission again recognized that a forward-looking methodology is "the ideal method for determining appropriate levels of explicit support" for rural carriers.[9]

The use of a forward-looking economic cost methodology for non-rural carriers has been a success. There is no reason to believe that use of the same methodology for rural carriers will not be equally successful. In contrast, the current embedded cost approach inhibits competition and encourages inefficiencies and waste, as Western's petition documents.[10]

B. ADOPTION OF A FORWARD-LOOKING COST METHODOLOGY FOR RURAL CARRIERS IS LONG OVERDUE

The Commission determined over six years ago that USF support for carriers serving rural areas should transition to a forward-looking economic cost methodology. Yet, there is currently no work underway to develop such a methodology for rural carriers. The embedded cost plan now in effect is due to expire less than three years from now, so the earliest that a forward-looking economic cost approach plan would be implemented would be in 2006. T-Mobile submits that ten years is more than sufficient time for carriers serving rural areas to adjust to a forward-looking USF support plan that is targeted to areas of need, is economically efficient, and allows for the development of competition in rural areas.[11]

The Joint Board initially proposed that rural carriers begin transitioning to a forward-looking methodology in 2001, with the transition ending in 2003, after which rural carrier USF

8 *See RTF Order,* 16 FCC Rcd 11244, 11311-12 ¶ 174 (2001).

9 *MAG Order,* 16 FCC Rcd 19613, 19668 ¶ 129 (2001).

10 *See* Western Petition at 17-30.

11 *See Remarks of Commisioner Jonathan S. Adelstein to NCTA,* February 3, 2003, at 10 ("The two foundational pillars of the Act are universal service and competition. . . . Neither of these pillars should be promoted at the expense of the other.")

support would be based entirely on a forward-looking economic cost methodology.[12] The Commission agreed that the rural carriers should "gradually shift to a support system based on forward-looking economic cost" on or after January 1, 2001.[13]

To achieve this objective, the Commission in 1997 referred the matter to the Joint Board which, at the Commission's suggestion, established a Rural Task Force. The Joint Board charged the Rural Task Force, which included five incumbent LECs and two local competitive carriers, with focusing "solely on studying the establishment of a forward-looking economic cost (FLEC) mechanism for rural carriers":

> Specifically, the RTF will consider whether a FLEC mechanism for rural carriers should have different platform design or input values than the mechanism adopted for non-rural carriers.[14]

The Joint Board asked that the Rural Task Force complete this task by June 15, 1998 so the Joint Board could submit its recommendations to the Commission in October 1998.[15]

The Rural Task Force submitted its recommendations to the Joint Board three years later, in September 2000.[16] The Rural Task Force rejected the Synthesis Cost Model that the Commission developed for non-rural carriers, because application of this Model would have reduced rural carrier USF subsidies by 70 percent, or "over one billion dollars" annually.[17] The Rural Task Force did not, however, consider changes to the Model or input values to

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12 *See Universal Service Recommended Decision,* 12 FCC Rcd at 236-36 ¶ 289.

13 *First Universal Service Order,* 12 FCC Rcd at 8889 ¶ 204.

14 *See Public Notice,* Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force, 12 FCC Rcd 15752, 15752-53 (1997).

15 *See id.* at 15753. The Joint Board later extended the deadline for the Task Force's report to nine months after the forward-looking economic cost mechanism for non-rural carriers is implemented. *See Public Notice,* Joint Board Announces Rural Task Force Members, FCC 98J-1 (July 1, 1998).

16 *See Rural Task Force Recommendations to Joint Board,* 16 FCC Rcd 6165 (2000).

17 *See id.* As the Commission later noted, the Task Force did not undertake an extensive analysis in rejecting the Synthesis Model and did not even update available inputs to the Model. *See RTF Order,* 16 FCC Rcd at 11312 nn. 411 and 412.

accommodate rural carriers – the specific task with which the Rural Task Force had been charged. Instead, the Rural Task Force, with a 5-2 ratio of incumbent/competitive local carriers, recommended that the Commission maintain for another five years the existing embedded cost methodology with some revisions – revisions estimated to increase the size of the high cost fund by $1.3 billion over five years.[18]

The Joint Board adopted the Rural Task Force's recommendations,[19] as did the Commission, with some modifications.[20] The Commission acknowledged that it could not at the time implement a forward-looking high-cost support mechanism for rural carriers because neither the Rural Task Force nor the Joint Board had provided the evidence needed to develop a forward-looking economic cost model that could be utilized for carriers serving rural areas.[21] The Commission did agree that the Rural Task Force's embedded cost proposal should be an interim plan only and that it was necessary to develop "a long-term plan that better targets support to carriers serving high-cost rural areas."[22] The Task Force's interim embedded cost plan is due to expire in June 2006.[23]

The Joint Board had also recommended that the Commission refer to it, "no later than January 1, 2002, a proceeding to consider implementation of an appropriate high-cost mechanism for rural carriers after the expiration of the Rural Task Force's plan."[24] The Joint Board explained that such a referral could enable it to devote "sufficient time to the task prior to the termination of that plan":

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18 *See Recommended Decision*, 16 FCC Rcd 6153, 6158 ¶ 11 (2000).

19 *See Recommended Decision*, 16 FCC Rcd 6153 (2000).

20 *See RTF Order,* 16 FCC Rcd 11244 (2001).

21 *See id.* at 11256 ¶ 25 and 11313 ¶ 177.

22 *Id.* at 11248 ¶ 8.

23 *See RTF Order,* 66 Fed. Reg. 30080 (June 5, 2001).

> We urge the Commission to use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural companies serving the highest cost areas.[25]

The Commission agreed in May 2001 that before the end of that year, it would refer to the Joint Board the issue of developing a plan to replace the Rural Task Force's five-year plan:

> [W]e intend to refer these issues to the Joint Board no later than January 1, 2002. We agree with the Joint Board that this proposed timing will permit the Joint Board and the Commission to consider the appropriate rural mechanism to succeed the plan we are adopting pursuant to the Rural Task Force's recommendation and to devote sufficient time to the task prior to the termination of that plan. . . . We will use the transitional period during which a modified embedded cost mechanism is in place to develop a long-term universal service plan that better targets support to rural telephone companies serving the highest cost areas. . . .[26]

Two years later, the Commission still has not referred to the Joint Board the task of developing a long-term universal service plan for rural carriers. Grant of Western's petition is needed because the Commission has not initiated the proceeding it stated it would commence two years ago. Given that the Rural Task Force plan is scheduled to expire in two and one-half years, the time to begin considering a replacement plan is now.

II. STEPS THE COMMISSION SHOULD TAKE IN RESPONSE TO THE WESTERN PETITION

T-Mobile recommends that the Commission take two steps in response to Western's petition: (a) immediately refer to the Joint Board the task of developing a forward-looking cost methodology for carriers serving rural areas; and (b) in the interim, impose a cap on the total disbursements on high-cost universal service funding for carriers serving rural areas. Since the inception of the program, the growth in USF disbursements to rural carriers has been so large

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24 *Recommended Decision*, 16 FCC Rcd at 6162 ¶ 21.

25 *Id.* at 6162-63 ¶ 21.

26 *RTF Order,* 16 FCC Rcd at 11310 ¶¶ 168-69.

that the resulting USF contribution factor (8.7 percent for the first quarter of 2004) threatens to undermine universal service in non-rural areas.

A. THE COMMISSION SHOULD IMMEDIATELY REFER TO THE JOINT BOARD THE TASK OF DEVELOPING A LONG TERM PLAN FOR RURAL CARRIER USF SUPPORT

The Commission has already determined that (1) the current Rural Task Force plan is an "interim" plan only that will end in mid-2006; (2) carriers serving rural areas should "shift gradually to a forward-looking economic cost methodology;" and (3) the Joint Board should develop a more targeted, long-term USF support plan before the current interim plan expires.[27] In fact, the Commission had stated that it would "refer these [long-term] issues to the Joint Board no later than January 1, 2002."[28]

It is unfortunate that the Commission has not already referred to the Joint Board the development of a new, long-term plan to replace the current Rural Task Force Plan. The Joint Board has already lost two years of valuable time that could have been utilized to begin the complex process of developing a replacement plan. But whatever the reason for the delay, the Commission should now expeditiously refer this matter to the Joint Board. Any additional delay will simply mean that the Joint Board – and the Commission – will have even less time to evaluate and develop a long-term plan.

The Commission should, moreover, provide certain directions to the Joint Board. The directions discussed below will minimize controversy and enable the Joint Board to discharge its duties more expeditiously. T-Mobile recommends that the instructions the Commission should give the Joint Board should include the following:

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[27] *See RTF Order,* 16 FCC Rcd at 11247 ¶ 4, 11256 ¶ 25, 11309 ¶ 166 and 11310 ¶ 168.

[28] *Id.* at 11310 ¶ 168.

1. The Joint Board should develop a forward-looking economic cost methodology suitable for carriers serving rural areas and not consider continuation of an embedded cost approach. Everyone agrees that carriers serving rural areas should be given a period to time to move to a forward-looking economic cost methodology. But with the Rural Task Force embedded cost plan now in place, carriers serving rural areas will have received over a decade in which to adjust to a new plan that is consistent with a competitive environment. Ten years is more than "ample time for rural carriers to adjust to any changes in support calculations."[29]

Precise instructions and directives are needed because the Rural Task Force was specifically charged in 1997 with focusing "solely on studying the establishment of a forward-looking economic cost (FLEC) mechanism for rural carriers," including the platform design and input values that should be utilized.[30] Despite the clarity of this directive, the Rural Task Force did not implement this task; instead, it developed modifications to the then existing embedded cost methodology – modifications that had the effect of increasing the total size of the USF fund by over a billion dollars.

2. The Commission should direct the Joint Board to consider all technologies – including wireless and voice over Internet protocol – in developing a forward-looking economic cost model. It is axiomatic that a forward-looking cost determination should be based on technology that would actually be deployed by a new carrier seeking to provide service. This deployment evaluation would not be limited to the technology deployed by the existing incumbent, but would include all available technologies, with the "winning technology" determined on the basis of cost and performance. As Western points out in its petition, there is considerable evidence that in

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29 *RTF Order,* 16 FCC Rcd at 11247 ¶ 4.

30 *See Public Notice,* Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force, 12 FCC Rcd 15752, 15752-53 (1997).

many rural areas the most efficient technology to provision telecommunications services is wireless rather than landline technology.[31] In addition, there is growing evidence that local exchange carriers will be abandoning traditional circuit-switched technology in favor of voice over Internet protocol ("VoIP"), because VoIP technology is cheaper and supports more robust capabilities.[32] The Commission should therefore charge the Joint Board with examining all of these technologies in order to determine which technology is the most efficient and should be used as the "baseline" for any forward-looking economic cost methodology the Joint Board proposes.

3. The Commission should direct the Joint Board to find mechanisms to target USF support more narrowly. Currently, USF high-cost support for rural carriers is averaged across all lines served by a carrier within its study area, which contains both high-cost areas and lower cost areas. The Commission has determined that USF support "should be disaggregrated and targeted below the [LEC] study area level," and it adopted the Rural Task Force's recommendation that rural incumbent carriers be permitted to elect whether or not to disaggregate.[33] It is T-Mobile's understanding that very few rural carriers have elected to disaggregate their support.

The Commission has noted repeatedly that USF support must be narrowly targeted. The Commission should therefore instruct the Joint Board to consider new, non-optional disaggregation proposals so support can be tailored more narrowly.

4. The Commission should direct the Joint Board to find a forward-looking economic cost methodology that will facilitate the eventual consolidation of the rural and non-rural USF programs. Size matters in the telecommunications industry. Large carriers often enjoy

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[31] *See* Western Petition at 34-36.

[32] *See, e.g.,* DENVER POST, *Qwest to Offer Internet Phone Service in Minn.* (Dec. 10, 2003).

[33] *See RTF Order,* 16 FCC Rcd at 11302 ¶ 144.

substantial economies of scale over small service providers (*e.g.,* larger carriers can secure discounts from vendors and can spread the cost of regulatory mandates over a far greater number of customers). Yet, as Western points out, due to the way in which the current USF programs are structured, large carriers are often incented to sell their assets to small carriers – not because small carriers would be more efficient, but because small carriers may be eligible for USF subsidies not available to large carriers.[34]

The Commission has already recognized that there are "significant problems" in having distinct USF plans for rural and non-rural carriers and that having separate plans is "not . . . viable" over the long term.[35] It may be unrealistic to expect that the first forward-looking economic cost plan for carriers serving rural areas would be identical to the plan currently used with carriers serving non-rural areas. However, the public interest would not be served by the adoption of a rural plan that is completely incompatible with the non-rural plan. T-Mobile therefore recommends that the Commission instruct the Joint Board to develop a forward-looking economic cost plan that is consistent with the Synthesis Model, so that over time the two plans can potentially be merged into a single plan.

B. THE COMMISSION SHOULD IMMEDIATELY CAP TOTAL DISBURSEMENTS FOR USF SUPPORT TO CARRIERS SERVING RURAL AREAS SO UNIVERSAL SERVICE IN NON-RURAL AREAS IS NOT JEOPARDIZED

The high-cost USF program has grown exponentially in recent years. It is time for the Commission to impose a cap on total high-cost USF disbursements, similar to the caps it has imposed on the schools/library and rural health care programs. American consumers simply cannot afford to pay more in USF assessments. Indeed, USF fees are becoming so sizable that

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34 *See* Western Petition at 23-24.

35 *See RTF Order,* 16 FCC Rcd at 11310 ¶ 170 and 11311 ¶ 173. *See also id.* at 11248 ¶ 8.

the rural carrier USF program is becoming counterproductive by threatening the affordability of telecommunications services in non-rural areas.

The high-cost USF program has grown exponentially over the past five years. During the first quarter of 1999, total USF disbursements for *all* carriers – those serving rural *and* non-rural areas – was $432 million.[36] In stark contrast, the Universal Service Administrative Company ("USAC") estimates that during the first quarter of 2004, total USF disbursements for *rural carriers alone* will be $720 million – or 67 percent higher than what was spent for *all* carriers five years earlier.[37] It is important to emphasize this is a quarterly disbursement estimate only; on an annual basis, the rural USF program disbursements will be nearly $3 billion.

Incumbent rural carriers would argue to the Commission that USF subsidy increases are due to the development of competition in rural areas. In fact, the USAC estimates that competitive carriers will receive during the first quarter of next year $82.3 million, or only 11.3 percent of total disbursements received by all carriers serving rural areas.[38] In contrast, incumbent carriers are scheduled to receive $638 million, or 88.6 percent of total disbursements.[39] USF support to competitive carriers in rural areas is clearly not the principal reason the rural USF program is growing so rapidly. Moreover, it bears remembering that USF subsidies available to competitive carriers are tied to USF subsidies given to incumbent carriers. If USF subsidies to competitive carriers seem high, the problem is not with the competitive

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36 *See* Universal Service Administrative Company, *Federal Universal Service Mechanisms Fund Size Projections for the First Quarter 1999,* at 2-8 (Nov. 2, 1998).

37 *See* Universal Service Administrative Company, *Federal Universal Service Mechanisms Fund Size Projections for the First Quarter 2004,* at 8-17 (Oct. 31, 2003).

38 *See* Universal Service Administrative Company, *Federal Universal Service Mechanisms Fund Size Projections for the First Quarter 2004,* at 8-17 (Oct. 31, 2003).

39 *See id.*

carriers, but with the level of support given to the incumbent carriers and the extent to which only the incumbents receive implicit support.

The rural USF program is, moreover, growing far more rapidly than is the contribution base. Four years ago, the USF contribution factor was 5.9 percent.[40] For the first quarter of 2004, the contribution factor will be 8.7 percent – or 47 percent higher than the factor four years ago.[41] Because of the caps imposed on the schools/libraries and rural health care programs, most of this 47 percent increase is due to the high cost fund program and most of these increased subsidy dollars have gone to incumbent carriers.

Chairman Powell noted recently that the purpose of the universal service program is to "get customers ubiquity and affordability of services."[42] The Congressional directive – "quality service should be available at just, reasonable and affordable rates"[43] – applies not just to consumers living in rural areas, but also to consumers living in urban and suburban areas. In this regard, courts have held that excessive universal service funding "can itself violate . . . the Act":

> Because universal services is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by customers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.[44]

In short, at some point, excessive levels of universal service contributions themselves threaten the bedrock universal service goal of affordability of telecommunications services – a goal which applies to urban and suburban areas as well as rural areas.

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[40] *See Public Notice,* Proposed Fourth Quarter 1999 Universal Service Contribution Factor, CC Docket No. 96-45, DA 99-1209 (Oct. 8, 1999).

[41] *See Public Notice,* Proposed Fourth Quarter 2003 Universal Service Contribution Factor, CC Docket No. 96-45, DA 03-2833 (Sept. 5, 2003).

[42] COMMUNICATIONS DAILY (Dec. 10, 2003), *summarizing* a December 9, 2003 presentation before the Academic and Telecom Industry of the University of California, San Diego.

[43] 47 U.S.C. § 254(b)(1).

[44] *Alenco Communications* v. *FCC,* 201 F.3d 608, 620 (5th Cir. 2000). *See also Qwest* v. *FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001).

Chairman Powell has noted that the benefits of the pro-competitive, deregulatory framework that Congress sought to achieve by adoption of the 1996 Act can "never be fully realized if contributions to universal service programs become so large they overtax carriers' ability to bring such benefits to consumers."[45] As importantly, continued unexamined growth in universal service disbursements threatens the very viability of competition and our nation's economy. As the Chairman has again stated:

> I believe we must diligently police the growth of universal service programs, lest such growth imperil carriers' efforts to bring the benefits of competition and innovation to consumers. In particular, we must limit carriers' contributions to universal service to the amounts absolutely necessary to fulfill the universal service statutory mandate. If subsidy programs get out of hand, they can dramatically raise competitors' costs and skew the economic incentives to enter markets.[46]

The Progress and Freedom Foundation recently conducted an analysis of the taxes and regulatory fees paid by wireless customers – excluding USF contributions.[47] This analysis determined that the typical wireless customer pays a total of 14.29 percent – excluding USF contributions – for his/her wireless service.[48] The analysis further demonstrates that eliminating these taxes and fees would increase wireless penetration by 22.8 million customers – a 15.5 percent increase.[49] While some of these funds support programs that are critical to public safety and to advancing important societal goals, it is also important to bear in mind that there are significant consequences associated with these taxes and fees. The Progress and Freedom Foundation concluded that nearly 23 million Americans cannot afford wireless services because

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[45] Separate Statement of Commissioner Michael K. Powell, *Third Universal Service Reconsideration Order,* 12 FCC Rcd 22801, 22810 (1997).

[46] Separate Statement of Commissioner Michael K. Powell, *Fourth Universal Service Reconsideration Order,* 13 FCC Rcd 5218, 5514 (1997).

[47] *See* THE PROGRESS AND FREEDOM FOUNDATION, Thomas M. Lenard and Brent D. Mast, *Taxes and Regulation: the Effects of Mandates on Wireless Phone Users,* Release 10.18 (Oct. 2003).

[48] *Id.* at 4.

of these taxes and fees, including the elderly and the working poor, who especially would stand to benefit from affordable telecommunications services.

Caps on total USF disbursements are the only way that the uncontrolled growth in the USF fund can be checked, until the more targeted long-term USF plan advocated here can be adopted. The Commission has used caps in the past with success and, importantly, courts have affirmed the lawfulness of such caps. As the Fifth Circuit has held, caps on expenditures "reflect a reasonable balance between the Commission's mandate to ensure sufficient support for universal service and the need to combat wasteful spending":

> The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.[50]

T-Mobile understands that the Commission is sympathetic to the needs of people living in high-cost rural areas. T-Mobile only asks that the Commission give equal consideration to the 23 million Americans – including the elderly and working poor – who cannot afford wireless service because existing taxes and fees are too high. T-Mobile, on behalf of its 12 million customers, urges the Commission to impose immediately a cap on total high cost USF disbursements while reform of the existing embedded cost plan is undertaken.

III. THE COMMISSION SHOULD ALSO CHARGE THE JOINT BOARD WITH CONSIDERING MORE SUBSTANTIAL REFORM, INCLUDING AUCTIONS AND CONSUMER VOUCHERS

The development of a forward-looking economic cost model for rural carrier USF support will be both complex and controversial. Rural incumbent carriers will look for cost inputs so current subsidy levels remain the same or increase. Carriers serving primarily non-rural areas will look for ways to ensure that total USF disbursements decrease. Given the

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49 *Id.*

prospects that the current status quo may lead to an impasse, T-Mobile encourages the Commission to charge the Joint Board with considering more substantial reform options.

The Joint Board and the Commission have already considered, *albeit* not exhaustively, a competitive bidding alternative, whereby USF subsidies would be given to the carrier willing to provide universal services in a given area at the lowest price. An auction-based USF plan could be competitively neutral, if developed carefully,[51] and sizable reductions in USF subsidies may be possible if the process is structured properly to help ensure that multiple firms submit bids. A major problem with this approach is that it could relegate customers in rural areas to a monopoly environment, because firms unsuccessful in the auction may be unable to meaningfully compete with a carrier receiving government subsidies.

Another, perhaps more promising possibility is the use of customer vouchers, whereby available USF subsidy dollars would effectively be given directly to customers residing in high cost areas rather than to the carriers serving the customers. As Courts have noted, the Communications Act "only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*":

> So long as there is sufficient and competitively neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well.[52]

Customer vouchers eliminate entirely the waste and inefficiencies associated with the current program, because each carrier would have to compete on price and service quality in order to secure customers and remain in business. Such an approach would also ensure competitive

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50 *Alenco Communications* v. *FCC,* 201 F.3d 608, 620-21 (5th Cir. 2000).

51 Incumbent carriers, with an existing network supported with past subsidy dollars, would have an enormous advantage in most auction scenarios. Thus, any auction proposal would have to be developed with utmost care. *See* Western Wireless Comments, CC Docket 96-45, May 5, 2003 (Attachment "J").

52 *Alenco Communications,* v. *FCC,* 201 F.3d 608, 620 (5th Cir. 2000)(emphasis in original).

neutrality, while allowing policy makers the option to limit the availability of vouchers to persons meeting a means test, an eligibility criterion that could substantially reduce the size of the overall USF fund.

T-Mobile appreciates that Congress would likely have to authorize use of one of these approaches. However, T-Mobile submits that Congress would seriously consider necessary enabling legislation if the Joint Board and the Commission determine they are better alternatives than use of a forward-looking economic cost methodology. Because these alternate approaches to universal service funding would likely require Congressional action, T-Mobile recommends that the Commission ask the Joint Board to complete its review of these alternatives within one year of the referral.

The proposals described above, however, do not obviate the need for the reforms advocated by Western. Vouchers and auctions, as potentially helpful as they could be, would not in and of themselves effect the fundamental changes needed in the current USF embedded cost methodology. T-Mobile therefore would endorse consideration of auctions and vouchers in tandem with, rather than as a substitute for, the long-overdue effort to move to a forward-looking cost methodology.

IV. CONCLUSION

The Commission has recognized that the current USF support mechanisms used with rural carriers "neither ensure that [they] are operating efficiently nor encourage them to do so" and, in fact, "effectively discourage efficiency."[53] The Commission further found that the 1996 Act "compel[s] us to implement support mechanisms that will send accurate market signals to

[53] *First Universal Service Order,* 12 FCC Rcd at 8934 ¶ 292.

competitors."[54] As a nation, we can no longer afford to subsidize the inefficiencies of the current system. It is time, finally, for the USF program to be fundamentally reformed.

For the foregoing reasons, T-Mobile respectfully requests that the Commission support the Western petition and expeditiously refer to the Joint Board consideration of a long-term USF plan for high cost rural areas and that it immediately impose a cap on total high-cost USF disbursements until a long-term plan is developed and implemented.

Respectfully submitted,

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54 *Ibid.*